



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

*note: please send this to
Mass re-remedial person
Thanks*

MAR 14 1994

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Recent Private Cost-Recovery Action

FROM: Earl Salo *ES*
Assistant General Counsel
for Superfund (2366)

TO: Bill Walsh-Rogalski
CERCLA Branch Chief
Region 1

SITE:	3-0000471
BREAK:	
OTHER:	MAD001403104
Olin Chemical 51 Edmes St. Wilmington	

Attached for your information is a copy of a recently-filed complaint in a private CERCLA cost-recovery case dealing with a site in your Region. As you know, copies of such complaints are sent to the Administrator under CERCLA § 113(1), and the Administrator's office sends them to OGC.

Attachment

247307



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KENNETH A. RUBIN
DIAL DIRECT (202) 467-7140

March 1, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Janet Reno, Attorney General
Department of Justice
Tenth Street &
Constitution Avenue, N.W.
Washington, D.C. 20530

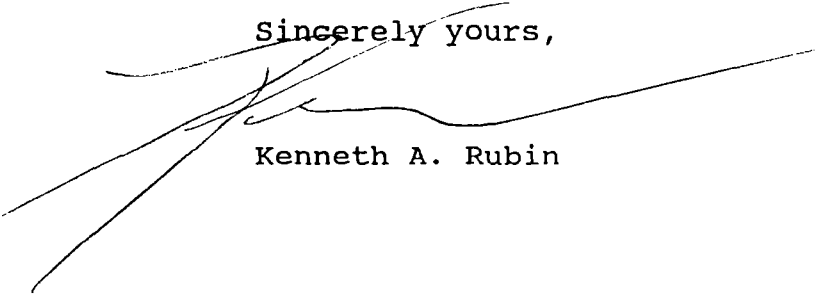
Carol M. Browner, Administrator
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Madam Attorney General and Madam Administrator:

Pursuant to section 113(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, we are providing each of you with a copy of our complaint filed by a private party seeking cost recovery under this statute.

The United States is not a party to this lawsuit and this complaint makes no claim against the United States.

Sincerely yours,


Kenneth A. Rubin

KAR:gaf

Enclosure

770394
2366

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
IN CLERK'S OFFICE
May 26 3 52 PM '93

OLIN CORPORATION,

Plaintiff,

v.

FISONS PLC, NOR-AM CHEMICAL COMPANY,
AMERICAN BILTRITE, INC.,
THE BILTRITE CORPORATION,
AND JOHN DOES,

Defendants.

CIVIL ACTION
NO.

93-1110

COMPLAINT

Plaintiff Olin Corporation ("Olin"), by undersigned counsel, brings this action for declaratory judgment, damages, and injunctive and other relief against the defendants named herein. For its complaint, Plaintiff alleges as follows:

1. This is a civil action brought pursuant to sections 107(a) and 113(g)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9607(a) and 9613(g)(2), Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass. G.L.c. 21E ("Chapter 21E"), for reimbursement of response costs incurred, and for declaratory judgment for future response costs to be incurred by Plaintiff in response to the release or threat of release of hazardous substances, hazardous wastes, oil, or hazardous materials into the environment at and from a property consisting of approximately 50 acres located at 51 Eames Street,

Wilmington, Massachusetts ("the Facility"). This complaint also asserts a claim for injunctive relief under section 7002(a)(1)(B) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1)(B), requesting an order that each of the defendants participate in the cleanup of the Facility.

2. Plaintiff Olin is the current owner of the Facility, which is a former manufacturing plant used for the production of organic chemicals. Olin purchased the Facility on September 15, 1980 from Stepan Company ("Stepan").

3. Industrial manufacturing activity at the Facility commenced in or about 1953, and since then has caused the Facility to be contaminated with hazardous substances, hazardous wastes, oil, and hazardous materials. Each of the defendants, or persons for whose actions the defendants are liable, as set forth more fully below, owned and/or operated the plant when hazardous substances, hazardous wastes, oil, and hazardous materials were stored and/or disposed of at the Facility and contributed to the disposal of solid or hazardous waste at the Facility.

JURISDICTION

4. This Court has jurisdiction over the subject matter of this action pursuant to sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), section 1331 of the United States Judicial Code, 28 U.S.C. § 1331, section 7002(a) of RCRA, 42 U.S.C. § 6972(a). This Court has pendent jurisdiction over all claims arising under Massachusetts law.

VENUE

5. Venue is proper in this District pursuant to section 113(b) of CERCLA, 42 U.S.C. § 9613(b), section 7002(a) of RCRA, 42 U.S.C. § 6972(a), and 28 U.S.C. § 1391(b), as a release, damages, and endangerment have occurred in this judicial district and the property that is the subject of this action is situated in this judicial district.

PARTIES

6. Plaintiff Olin is a Virginia corporation with its principal place of business in Stamford, Connecticut.

7. Defendant Fisons plc ("Fisons") is a United Kingdom corporation with its principal place of business in Ipswich, England.

8. Defendant NOR-AM Chemical Company ("NOR-AM") is a Delaware corporation with its principal place of business in Wilmington, Delaware.

9. Defendant American Biltrite, Inc. ("ABI") is a Delaware corporation with its principal place of business in Wellesley Hills, Massachusetts.

10. Defendant The Biltrite Corporation ("TBC") is a Delaware corporation with its principal place of business in Waltham, Massachusetts.

11. Defendants John Does, and their agents, owners, servants, employees, joint venturers, successors, assigns, personal representatives, heirs, and administrators, are

individuals and business entities whose identities are not presently known to Plaintiff (the "John Doe defendants"). The John Doe defendants are liable for their actions and omissions as hereinafter described.

FACTUAL BACKGROUND
OWNERSHIP AND OPERATION OF THE FACILITY

12. An industrial plant ("the Plant") was initially constructed at the Facility in or about 1953.

13. From the time of the Plant's construction until 1968, the Plant was at various times owned and/or operated by defendants, or by persons for whose actions defendants are liable, under the name National Polychemicals, Inc. ("NPI").

14. Upon information and belief, the Plant was at various times owned and/or operated, under the name of NPI, by one or more members of the John Doe defendants.

15. Upon information and belief, in or about 1959, American Biltrite Rubber Company ("ABR") acquired NPI and began ownership and/or operation of the Plant under the name of NPI.

16. Upon information and belief, in January 1964, ABR dissolved NPI, assumed all of the liabilities of NPI, and became a successor to those liabilities. ABR and/or one or more members of the John Doe defendants owned and/or operated the Plant from its inception until NPI was merged into ABR and dissolved.

17. Upon information and belief, NPI was an owner or operator of the Facility at the time of the disposal of hazardous

substances, hazardous wastes, oil, and hazardous materials at the Facility.

18. Upon information and belief, ABR owned and operated the Plant directly from January to February 1964.

19. Upon information and belief, ABR was the owner or operator of the Facility at the time of the disposal of hazardous substances, hazardous wastes, oil, and hazardous materials at the Facility.

20. Upon information and belief, ABR operated the Plant for the production of organic chemicals used in the manufacture of rubber and plastics. Operations of ABR included, but were not limited to, the manufacture of the following chemicals: Opex, Kempore, Wytox ADP, hydrazine, phthalate plasticizers, and phenolic and urea formaldehyde resins.

21. On May 3, 1973, ABR adopted the name American Biltrite, Inc. ("ABI").

22. Upon information and belief, ABI is a successor to the liabilities of the former NPI and the former ABR.

23. In 1982, part of ABI was split off from ABI to form a separate company with the name The Biltrite Corporation ("TBC").

24. As part of the creation of TBC from ABI, TBC assumed certain liabilities of ABI.

25. Upon information and belief, TBC is a successor to certain liabilities of the former ABR arising out of NPI's and ABR's operation of the Facility.

26. Upon information and belief, in or about 1964, through an entity known as Whiffens, Inc., Fisons Limited created a new corporation, also known as National Polychemicals, Inc. ("NPI-2"), which acquired the Plant from ABR. At the time, Fisons Limited was a United Kingdom corporation with its principal place of business in Ipswich, England.

27. Upon information and belief, during Fisons Limited's ownership of NPI-2, Fisons Limited operated the Plant for the production of organic chemical products including, but not limited to, Opex, Kempore, hydrazine, Wytox 312, Actafoam R-3, Wytox ADP, Wiltrol N, and phenolic and urea formaldehyde resins.

28. Upon information and belief, Fisons Limited was an owner or operator of the Facility at the time of the storage and/or disposal of hazardous substances, hazardous wastes, oil, and hazardous materials at the Facility.

29. Upon information and belief, in or about 1966, Fisons Limited transferred all shares of NPI-2 to its wholly-owned subsidiary, Fisons Corporation, a Massachusetts corporation. Fisons Corporation and one or more members of the John Doe defendants owned and/or operated the Plant until Stepan acquired NPI-2 in 1968.

30. Upon information and belief, beginning in or about 1966, Fisons Corporation operated the Plant along with Fisons Limited for the production of organic chemicals and, in addition, leased a portion of the Facility from NPI-2. During its

operation of the Facility, Fisons Corporation operated the Plant for the production of organic chemical products including, but not limited to, Opex, Kempore, hydrazine, Wytox 312, Actafoam R-3, Wytox ADP, Wiltrol N, and phenolic and urea formaldehyde resins.

31. Upon information and belief, Fisons Corporation was an owner or operator of the Facility at the time of the storage and/or disposal of hazardous substances, hazardous wastes, oil, and hazardous materials at the Facility.

32. Upon information and belief, Fisons Limited and Fisons Corporation used a portion of the Facility for the operations of the Lee Patten Seed Company, which manufactured fertilizer using urea, a hazardous substance within the meaning of § 101(14) of CERCLA, and for the operations of one or more members of the John Doe defendants.

33. Upon information and belief, the Lee Patten Seed Company was an owner or operator of the Facility at the time of the storage and/or disposal of hazardous substances, hazardous wastes, oil, and hazardous materials at the Facility.

34. Upon information and belief, the Lee Patten Seed Company was at times also known as PATCO, PATCO Products, Inc., Doggett-Pfeil Laboratories, Inc., and Doggett-PATCO Corporation.

35. Upon information and belief, the entity known as the Lee Patten Seed Company, PATCO, PATCO Products, Inc., Doggett-Pfeil Laboratories, Inc., and Doggett-PATCO Corporation dissolved in or about 1969 while a subsidiary of Fisons

Corporation, which dissolution resulted in the liquidation of the assets of the former, variously named corporate entities.

36. On March 1, 1982, Fisons Limited adopted the name Fisons plc.

37. On July 24, 1973, Fisons Corporation adopted the name Fisons Incorporated ("Fisons, Inc.").

38. On March 26, 1981, Fisons, Inc. merged with FBC Chemicals, Inc., a Delaware corporation, with FBC Chemicals, Inc. as the surviving corporation.

39. On May 22, 1981, FBC Chemicals, Inc. adopted the name BFC Chemicals, Inc.

40. On November 30, 1983, BFC Chemicals, Inc. adopted the name NOR-AM Chemical Company.

41. Upon information and belief, NOR-AM Chemical Co. is a successor to the liabilities of the former Fisons Corporation and the former Lee Patten Seed Company.

42. Upon information and belief, from the time of the Plant's initial operation, and continuing within the period of NPI's, ABR's, Fisons Limited's, and Fisons Corporation's ownership and/or operation of the Facility, wastes and waste waters from the Facility containing hazardous substances within the meaning of § 101(14) of CERCLA, 42 U.S.C. § 9601(14), and oil and hazardous materials within the meaning of section 2 of Chapter 21E, were disposed of in an unlined lagoon at the Facility known as "Lake Poly," into unlined pits located in the central portion of the Facility, and elsewhere at the Facility.

43. Upon information and belief, chromium and/or chromium compounds, a hazardous substance within the meaning of § 101(14) of CERCLA, 42 U.S.C. § 9601(14), were disposed of in the unlined pits and/or Lake Poly and elsewhere at the Facility as a result of the Kempore process until at least 1967, i.e., during the ownership and/or operation of the Facility by each of the defendants or persons for whose acts they are liable.

44. Upon information and belief, urea and other hazardous substances were disposed of at the Facility during the ownership and/or operation of the Facility by the Lee Patten Seed Company.

45. On September 18, 1968, Stepan acquired NPI-2 from Fisons Corporation and commenced operation of the Plant.

46. In 1971, NPI-2 was merged into Stepan.

47. On September 15, 1980, Olin acquired the Facility from Stepan and commenced operation of the Facility.

48. In 1986, Olin terminated production at the Plant.

49. On January 15, 1987, the Facility was listed as a Confirmed Disposal Site (non-priority) by the Massachusetts Department of Environmental Quality Engineering.

50. Since the Facility was listed as a Confirmed Disposal Site, Olin has acted pursuant to Chapter 21E and the Massachusetts Contingency Plan, 310 C.M.R. § 40.001 et seq., and pursuant to deadlines set forth therein, in implementing response actions at the Facility.

51. Upon information and belief, ABR, Fisons Limited, Fisons Corporation, and the John Doe defendants, during the periods of their respective ownerships of NPI or NPI-2, exercised substantial control over day-to-day operations at the Facility. By virtue of this control over Plant operations, these persons operated one or more facilities at the Plant site during their respective ownerships of NPI or NPI-2.

52. Upon information and belief, ABR, Fisons Limited, Fisons Corporation, and the John Doe defendants, during the periods of their respective ownerships of NPI or NPI-2, utilized NPI or NPI-2 for the production of chemicals for the benefit of each such owner.

53. Upon information and belief, ABR, Fisons Limited, Fisons Corporation, and the John Doe defendants, during the periods of their respective ownerships of NPI or NPI-2, operated NPI or NPI-2 without regard to the corporate form. In the interest of public convenience, fairness, and equity, these persons and/or their successors are liable for the obligations of NPI or NPI-2.

54. Upon information and belief, ABR, Fisons Limited, Fisons Corporation, the Lee Patten Seed Company, and the John Doe defendants, during the periods of their respective ownerships of NPI, NPI-2, and/or the Facility, were owners and/or operators of the Facility within the meaning of section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A) and within the meaning of section 2 of Chapter 21E.

55. Upon information and belief, NPI, ABR, Fisons Limited, Fisons Corporation, the Lee Patten Seed Company, and the John Doe defendants, each were owners and/or operators of the Facility at the time of disposal of hazardous substances at the Facility, within the meaning of CERCLA section 107(a)(2), 42 U.S.C. § 9607(a)(2), and of oil and hazardous materials within the meaning of section 2 of Chapter 21E.

56. Upon information and belief, NPI, ABR, Fisons Limited, Fisons Corporation, the Lee Patten Seed Company, and the John Doe defendants engaged in activities that caused, and continue to cause, the release and disposal at the Facility of hazardous substances as that term is defined by CERCLA section 101(14), 42 U.S.C. § 9601(14), and of oil and hazardous materials as defined in section 2 of Chapter 21E.

57. NPI, ABR, Fisons Limited, Fisons Corporation, the Lee Patten Seed Company, and the John Doe defendants knew or should have known that their manner of handling and disposing of dangerous substances at the Facility posed a risk of harm.

58. Despite the fact that they knew or should have known of a risk of harm, NPI, ABR, Fisons Limited, Fisons Corporation, the Lee Patten Seed Company, and the John Doe defendants handled and disposed of dangerous substances at the Facility in a manner that was likely to cause harm and that did in fact cause harm to Olin.

COUNT I -- CERCLA § 107(a)

(Against All Defendants)

59. Plaintiff incorporates by reference as if set forth fully herein paragraphs 1 through 58.

60. Plaintiff Olin is a "person" within the meaning of section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

61. Each of the defendants is a "person" within the meaning of section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

62. The property owned by Olin at 51 Eames Street, Wilmington, Massachusetts is a "facility" within the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

63. "Hazardous substances," within the meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the Facility during the ownership and/or operation of the Facility by each of the defendants or persons for whose actions the defendants are liable. Such substances include, without limitation, chromium and/or chromium compounds.

64. "Releases" and the threat of continuing releases of hazardous substances, including, but not limited to, chromium, into the environment within the meaning of section 101(22) of CERCLA, 42 U.S.C. § 9601(22), have occurred and are continuing to occur at the Facility.

65. The releases and threatened releases of hazardous substances at the Facility have caused Olin to incur "necessary costs of response" in excess of \$1 million, plus interest, and will continue to cause Olin to incur "necessary costs of

response" within the meaning of sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a) and other damages. Response actions undertaken to date include but are not limited to groundwater monitoring, hydrogeologic studies, and development of a Comprehensive Site Assessment, which is nearing completion and which will include a Risk Assessment.

66. The necessary costs of response incurred by Olin in response to the release and/or threat of release of hazardous substances at the Facility have been consistent with the National Contingency Plan, promulgated pursuant to section 105(a) of CERCLA, 42 U.S.C. § 9605(a), as codified at 40 C.F.R. Part 300, and the Massachusetts Contingency Plan, 310 Code of Mass. Regulations ("CMR") 40.000 et seq.

67. Each of the defendants is a person liable under section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as a person who was an owner or operator of the Facility within the meaning of section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), at the time of disposal of hazardous substances at the Facility.

68. Each of the defendants is a person liable under section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), as a person who by contract, agreement, or otherwise arranged for disposal of hazardous substances at the Facility.

69. Each defendant is jointly and severally liable for all response costs, including the costs of removal and remedial actions, incurred or to be incurred at or relating to the Facility.

70. Plaintiff reserves the right to amend this complaint and/or to file one or more separate actions, as authorized by section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), against individuals who are referred to as the John Doe defendants in this complaint and who are potentially responsible parties under section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as their identities become known to Plaintiff, to recover, on the foregoing grounds or on alternative grounds, response costs incurred, or to be incurred, at the Facility.

COUNT II -- CERCLA § 113(f)

(Against All Defendants)

71. Plaintiff incorporates by reference as if set forth fully herein paragraphs 1 through 70.

72. Each of the defendants is a person liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as a person who owned or operated a facility at the time of disposal of hazardous substances, as set forth more fully above.

73. As persons liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a), each of the defendants is also liable to Plaintiff for contribution to Plaintiff's response costs, pursuant to section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

COUNT III -- DECLARATORY JUDGMENT

(Against All Defendants)

74. Plaintiff incorporates by reference as if set forth fully herein paragraphs 1 through 73.

75. There is an actual controversy between Plaintiff and each of the defendants as to their rights and duties concerning the contamination at the Facility.

76. Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. § 2201, and section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), as to the rights and duties of the parties, and, in particular, a determination that each defendant is liable under sections 107(a) and 113(f) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(f), for past, present, and future costs of assessment, containment, response, removal, and remediation arising from the presence of hazardous substances at the Facility. In addition, Plaintiff seeks a declaratory judgment that each defendant is liable under sections 4 and 5 of Massachusetts General Law Chapter 21E for contribution, reimbursement, and equitable share of all past, present, and future costs of all necessary and appropriate response actions at the Facility.

COUNT IV -- RCRA § 7002

(Against All Defendants)

77. Plaintiff incorporates by reference as if set forth fully herein paragraphs 1 through 76.

78. Olin is a "person" within the meaning of section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

79. Each of the defendants is a "person" within the meaning of section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

80. Each of the defendants, or persons for whom they are liable, has contributed to the handling, storage, treatment, transportation, or disposal of solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

81. Ninety days advance notice has been given by Olin under section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), to the Administrator and the State and to each of the named defendants.

82. Olin therefore is entitled to injunctive relief pursuant to section 7002(a) of RCRA, 42 U.S.C. § 6972(a), ordering each of the defendants to conduct a cleanup of contamination at and emanating from the Facility.

COUNT V -- MASSACHUSETTS GENERAL LAW CHAPTER 21E

(Against All Defendants)

83. Plaintiff incorporates by reference as if set forth fully herein paragraphs 1 through 82.

84. The Facility is a "site" within the meaning of section 2 of Chapter 21E.

85. The Facility was owned and/or operated by each of the defendants, or by persons for whose actions the defendants

are liable, at the time that "hazardous materials" within the meaning of section 2 of Chapter 21E, were stored or disposed of at the Facility. The materials disposed by each of the defendants include, without limitation, oil and chromium and/or chromium compounds.

86. Each of the defendants, or persons for whose actions the defendants are liable, by contract, agreement, or otherwise, directly or indirectly, arranged for the transport, disposal, storage or treatment of hazardous materials to or in the Facility.

87. Each of the defendants, or persons for whose actions the defendants are liable, otherwise caused or is legally responsible for the release or threat of release of oil or hazardous materials from the Facility.

88. "Releases" and the threat of continuing releases of oil and hazardous materials into the environment, within the meaning of section 2 of Chapter 21E, have occurred and are continuing to occur at the Facility. The materials being released at the Facility include, without limitation, oil and chromium.

89. As a result of the release of oil and hazardous materials at the Facility, Olin has undertaken, and intends to continue to undertake, "necessary and appropriate response action" within the meaning of Chapter 21E. Response actions undertaken by Olin to date include but are not limited to groundwater monitoring, hydrogeologic studies, and development of

a Comprehensive Site Assessment, which is nearing completion and which will include a Risk Assessment.

90. Pursuant to section 4 of Chapter 21E, each of the defendants is liable to Olin for its equitable share of the costs of the response action.

91. As a result of the release of oil and hazardous materials at the Facility, Olin has suffered and incurred and will continue to suffer and incur damage to property.

92. Pursuant to section 5 of Chapter 21E, each of the defendants is jointly and severally liable to Olin for the damage to Olin's property incurred or suffered as a result of the release or threat of release of oil and hazardous materials at or from the Facility.

93. On October 27, 1992, Olin gave notice pursuant to section 4A of Chapter 21E to Stepan and to each of the named defendants that Olin had taken and would take response action; that Olin intended to seek contribution, reimbursement, or equitable share from the defendants; and that Olin requested each of the named defendants to participate in the performance of the response action on an equitable basis, or to make contribution or reimbursement, or to pay an equitable share of the costs of the response action. In sending said notice, Olin followed the procedures established in section 4A(a) of Chapter 21E.

94. From October 1992 through April 1993, Olin followed the procedures established in section 4A of Chapter 21E, and negotiated in good faith towards resolving all disputes with

respect to the Facility, including disputes between Olin and each of the named defendants. In connection with its efforts to resolve these disputes, Olin supplied numerous documents describing the environmental contamination of the Facility and supporting Olin's claims against each named defendant.

95. As a result of these negotiations, Olin and Stepan have reached an agreement pursuant to which Stepan and Olin are cooperating in the response action at the Facility and sharing the costs thereof.

96. Despite Olin's good faith efforts to resolve disputes between Olin and each of the named defendants, these disputes remain unresolved in that each named defendant refuses to accept any responsibility for the release of oil and hazardous materials at the Facility and each refuses to participate in or contribute to the response action.

97. Each of the named defendants has failed to participate in negotiations in good faith.

98. Each of the named defendants has failed, without reasonable basis, to enter into or carry out an agreement to perform or participate in the performance of the response action on an equitable basis or pay any share of the costs of such response action, although the liability of each defendant was reasonably clear.

99. Olin is therefore entitled to judgment against each defendant as follows: for such defendant's equitable share of the costs of the response action; for Olin's litigation costs

and reasonable attorneys' fees in this action; and for all damage to Olin's property incurred or suffered as a result of the release or threat of release of oil or hazardous materials.

COUNT VI -- INDEMNITY

(Against All Defendants)

100. Plaintiff incorporates by reference as if set forth fully herein paragraphs 1 through 99.

101. By the foregoing acts and omissions, the defendants, or persons for whom the defendants are liable, have caused and will cause Plaintiff to incur substantial liability.

102. But for the tortious acts of the defendants, or persons for whom the defendants are liable, Plaintiff would not be subject to such liability. The defendants, or persons for whom the defendants are liable, are entirely at fault for the damages that have occurred as a proximate result of releases of hazardous materials at the site.

103. Because of the disparity in the fault of the parties, Plaintiff is entitled to full indemnification from the defendants for the costs of response, removal, and remedial action and assessment, containment, and removal within the meaning of and consistent with CERCLA, and Massachusetts Chapter 21E, as well as any liability incurred as a result of damage claims asserted against Olin by reason of the damage caused by the acts and omissions of the defendants.

COUNT VII -- RESTITUTION

(Against All Defendants)

104. Plaintiff incorporate by reference as if set forth fully herein paragraphs 1 through 103.

105. As persons responsible for contamination at the Facility, each of the defendants had a duty to act in response to the contamination so as to prevent harm to persons or the environment, which duty the defendants failed to carry out.

106. Response actions conducted by Plaintiff at the Facility have been immediately necessary to prevent harm to persons or the environment.

107. Plaintiff undertook these response actions unofficiously and with the intent to seek recovery of costs from persons responsible for the environmental contamination.

COUNT VIII - CONTRIBUTION UNDER G.L. C. 231B

(Against All Defendants)

108. Plaintiff incorporates by reference as if set forth fully herein paragraphs 1 through 107.

109. As persons responsible for contamination at the Facility, each of the defendants is liable for the response costs at the Facility.

110. To the extent that plaintiff is liable, that liability would only arise under a strict liability regime without fault and defendants would be jointly liable with plaintiff.

111. To the extent that plaintiff is required to pay more than its pro rata share of the liability, plaintiff is entitled to contribution from defendants under G. L. c. 231B.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Olin Corporation requests that this Court:

1. Enter judgment in favor of Olin and against defendants, jointly and severally, for all damages, including response costs, incurred by Plaintiff, together with a declaratory judgment that pursuant to CERCLA section 107(a), each of the defendants is jointly and severally liable for all damages, including response costs and interest, incurred or to be incurred by Plaintiff in connection with the Facility, together with costs of this action, expenses, and attorneys' fees according to law.

2. Enter judgment, pursuant to section 113(f) of CERCLA, 42 U.S.C. § 6319(f), in favor of Olin and against each of the defendants, holding each defendant liable for its allocated share of response costs and interest incurred or to be incurred by Plaintiff in connection with the Facility, together with the costs of this action, expenses, and attorneys' fees according to law, including declaratory relief for an allocation of all future response costs and other compensable damages in accordance with section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), using such

equitable factors to make such allocation as the Court determines are appropriate.

3. Enter judgment pursuant to section 7002(a) of RCRA, 42 U.S.C. § 6972(a), in favor of Olin and against each of the defendants, ordering them to take such action as may be necessary to abate the contamination at and emanating from the Facility, which contamination may present an imminent and substantial endangerment to health or the environment.

4. Enter judgment in favor of Olin and against each of the defendants, pursuant to sections 4 and 4A of Massachusetts Chapter 21E, Mass. Gen. L. ch. 21E, holding each defendant liable for its equitable share of response costs, including declaratory relief for an equitable share of all of future response costs, and including litigation costs and reasonable attorneys' fees.

5. Enter judgment in favor of Olin and against defendants, pursuant to section 5 of Massachusetts Chapter 21E, Mass. Gen. L. ch. 21E, holding defendants jointly and severally liable for all damages to Olin's property suffered or incurred as a result of the release or threat of release of oil or hazardous materials together with costs and reasonable attorney's fees.

6. Enter judgment in favor of Olin and against each of the defendants, under the common law theory of indemnity, for Plaintiff's costs incurred in responding to environmental contamination at the Facility caused by defendants, together with a declaratory judgment that each of the defendants is jointly and severally liable for damages, including interest, incurred or to

be incurred by Olin in connection with the Facility, together with costs of this action, expenses, and attorneys' fees according to law.

7. Enter judgment in favor of Olin and against each of the defendants for restitution of Plaintiff's costs incurred in responding to environmental contamination at the Facility caused by defendants.

8. Enter a declaratory judgment on liability, pursuant to section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201 in favor of Olin, that will be binding on any subsequent action or actions to recover further response costs to be incurred by Olin in response to the release of threat of release of hazardous substances, oil or hazardous materials at the Facility.

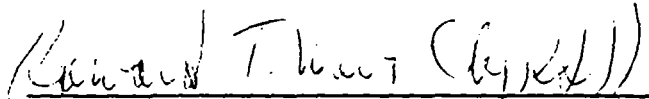
9. Grant Olin injunctive relief in the form of an order enjoining each of the defendants to participate in the cleanup of environmental contamination at and emanating from the Facility.

10. Enter judgment, pursuant to G.L. c. 231B in favor of Olin and against each of the defendants, holding each defendant liable for its contribution share and interest incurred or to be incurred by Plaintiff in connection with the Facility, together with the costs of this action, expenses, and attorneys' fees according to law, including declaratory relief for an allocation of all future response costs and other compensable damages

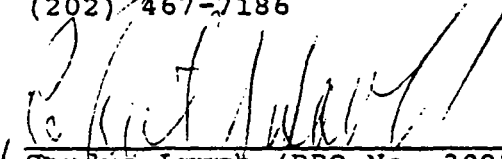
11. Grant Olin all other appropriate relief that the Court deems to be just and proper.

Respectfully Submitted,

Date: May 26, 1993



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